

The Americans with Disabilities Act—Where are We Today?

Fourteen years after the signing of the Americans with Disabilities Act (ADA) in 1990, the landmark federal law has proved a remarkable success, defying the doom and gloom predictions of many members of Congress. At the same time however, the law has not fully delivered on its key promises to eliminate discrimination against people with disabilities in the workplace and in public accommodations.

The ADA was designed to protect the rights of people with disabilities in regard to access to employment; state and local government programs and services; access to places of public accommodation such as businesses, transportation and non-profit service providers; and telecommunications.

IPAS staff has followed the successes and difficulties of the Act from its inception. The ADA has given the public a great deal of guidance in the area of accessibility and assessment standards. The biggest strides have been made architecturally, with public buildings becoming more and more accessible and new construction permits being issued only if the plans include ADA standards. Design changes such as curb cuts, ramps, lifts on buses, and other access designs are increasingly common.

One of the biggest shortfalls of the Act is the state's protection under the 11th Amendment immunity. The 11th Amendment of the Constitution of the United States prohibits individuals from filing lawsuits against state entities. This can present quite a problem for an individual with a disability with a

complaint against a government employer or public building—leaving the individual with little or no legal recourse. For now, the validity of the 11th Amendment and its relationship to the ADA is still being debated in Federal courts around the nation.

IPAS has not experienced a great deal of difficulty in helping its clients in regard to the ADA. IPAS staff has resolved most claims without the need of legal action. Most cases come down to lack of information on behalf of the offending party, not because of disregard for the ADA.

Another significant problem that hasn't disappeared in the years since ADA was enacted is access to the voting booth. Access for people with disabilities to voting booths, while protected under the ADA, has not been completely solved by the Act. Recently, supplemental legislation of the Help America Vote Act has been the newest hope for providing equal access for all voters. IPAS staff continue to make accessible voting a priority and last year implemented the PAVA program (Protection and Advocacy for Voting Accessibility).

While much remains to be done to make all aspects of society accessible, the ADA has at the very least made the public more aware of disability issues. The ADA has given us standards to strive for, and IPAS will continue to look for ways to help empower individuals with disabilities, using the ADA as a tool.

For more information on the Americans with Disabilities Act of 1990 visit www.ada.gov.

MISSION STATEMENT

To protect and promote the rights of individuals with disabilities, through empowerment and advocacy.

INSIDE

Agency Spotlight	2-5
Power Soccer.....	5
You Don't Count if You Don't Vote	6
Indiana 211 Partnership	7
Case Studies.....	8-9
You Can't Bring That Dog In Here	10-11
Children With Disabilities Under No Child Left Behind: Myths and Realities	12-15
IPAS Conference Update	15-17
DD Network.....	17-18
IPAS Commission, Council and Staff members.....	19

Agency Spotlight

IPAS would like to applaud the efforts of other agencies who share in their commitment to advocate and empower individuals with disabilities. The following pages highlight a few organizations that are such an important part of our community. If you would like more information on any of the groups mentioned in our Agency Spotlight please contact the organization directly or contact IPAS to learn more.

THE GENERATIONS PROJECT

Creating opportunities for citizens, organizations and businesses to address long-term health care issues and improve quality of life in Indiana.

IPAS recognizes the importance of client independence, and the need for the most effective utilization of community resources. Groups that agree with this philosophy joined together to form The Generations Project. For the first time, a multi-organizational entity exists to address Indiana's long-term health care crisis. The Generations Project seeks to help Hoosiers, who are dealing with illness, disability and the need for long-term health care, maintain the independence and dignity that they desire.

Today, Indiana spends over \$1.1 billion for nursing homes and only \$194 million for home and community-based care. In the past, nursing home care was seen as the only option for long-term care. However, with the growth of quality home

care providers, new technology and community-based alternatives, consumers now have many more options.

The state's inefficient spending has resulted in over 27,000 Hoosiers on waiting lists to access state-funded home and community-based health care. Thousands of Hoosiers are forced to live in nursing homes, even though they could receive the care they need in their own homes.

Created in December 2001, The Generations Project is an alliance of 10 leading consumer and human service organizations. The project aims to educate citizens, advocates and policymakers about the need for balanced and long-term care.

When the project succeeds, Hoosiers will receive quality, reliable and affordable care at home and in their communities. The Generations Project

Agency Spotlight continued on page 3

(Agency Spotlight cont.)

believes these changes will result in healthier citizens, strengthened families, and a more efficient use of state tax dollars.

For more information on how you can help, please visit their Web site at www.generationsproject.org. You can also call (317) 423-7108 or (317) 423-7102, or write The Generations Project, c/o AARP, One North Capitol Avenue, Suite 1275, Indianapolis, IN, 46204. You may also contact the Citizens Action Coalition Education Fund, 5420 N. College Avenue, Room 100, Indianapolis, IN 46220.

K.E.Y. CONSUMER ORGANIZATION

Knowledge Empowers You

Promoting knowledge and understanding, to unlock doors for people with mental illness. As with many organizations that seek to help those who are often overlooked, K.E.Y.'s vision stems from a common, yet crucial principal—knowledge. Understanding can only be reached when knowledge reaches everyone, from the individuals who need treatment to members of the community in which they live.

K.E.Y. officially began in 1988 with support from the Mental Health Association. The K.E.Y. Board of Directors, all mental health consumers, obtained nonprofit status in 1990. Local affiliate groups soon followed, and now K.E.Y.'s dedication reaches statewide. K.E.Y. also assists other self-help groups to “empower individuals with mental illness to unlock their full potential.”

K.E.Y. offers a range of services to empower consumers of Indiana mental health treatment services:

- The organization strives to create a statewide network for all consumers by continually encouraging the development of local support groups.
- K.E.Y. provides consultative assistance to local advocacy and self-help groups.
- Effective programs are based upon their most valuable resource—the collective and individual brainpower of the individuals who they help. K.E.Y. utilizes the knowledge, strengths and experiences of consumers of mental health services to maintain and build truly effective programs.
- Empowering consumers is only one step in the effort to promote understanding and stop discrimination. Therefore, K.E.Y. offers public education statewide that informs communities about mental illness and treatment, helping to dispel misconceptions and stereotypes.
- To seek consumers' full potential, K.E.Y. also produces an employment model, which demonstrates reasonable accommodations for employees with mental illness.

To find out more information for you or a loved one, or to find how you can help, contact:

K.E.Y. CONSUMER ORGANIZATION
2506 Willowbrook Parkway, Suite 199
Indianapolis, IN 46205
1-800-933-KEYS
Fax: (317) 205-2510
E-mail: kconsumer@aol.com

COVOH—COUNCIL OF VOLUNTEERS AND ORGANIZATIONS FOR HOOSIERS WITH DISABILITIES

“Keep the client informed” is an IPAS guiding principal and a main philosophy of the Council of Volunteers and Organizations for Hoosiers with Disabilities (COVOH). For both organizations, client knowledge is only one aspect in a long list of principals and services designed to improve the life of individuals living with disabilities.

Agency Spotlight continued on page 4

(Agency Spotlight cont.)

COVOH is a not-for-profit membership alliance of state, regional and local organizations. COVOH maintains a strong collaboration between its organizations to raise awareness and increase progress toward an integrated society.

Similar to IPAS, COVOH follows a philosophy that focuses upon gaining independence for individuals with disabilities and their families. COVOH develops programs and services that allow individuals with disabilities and their families to achieve independent participation in society. The council also provides programs to raise disability awareness in the communities.

COVOH follows a four-pronged philosophy to foster success. The council believes that to succeed individuals must have the opportunity to:

- LIVE independently in their home and community
- LEARN by being provided a free and appropriate education in the least restrictive environment
- WORK in a community that allows individuals with disabilities to realize their dreams of self-sufficiency by obtaining and maintaining worthwhile employment
- PLAY in a society where individuals with disabilities can enjoy an active role in all segments of a fulfilling life

COVOH offers a variety of services to help individuals LIVE, LEARN, WORK and PLAY in their community. The council offers information and referral to persons with disabilities. COVOH maintains communication and arranges meetings to address disability-related issues. The council also organizes educational training and empowerment forums. COVOH focuses on public policy by developing and advocating platforms for the benefit of those with disabilities. COVOH's effort is further aided by its representation on state advisory boards, councils and task forces.

For more information about COVOH and its services:

COUNCIL OF VOLUNTEERS AND
ORGANIZATIONS FOR HOOSIERS
WITH DISABILITIES

445 North Pennsylvania Street, Suite 521

Indianapolis, IN 46204

1-800-262-8630 (Voice/TDD)

FAX: (317) 262-0685

E-mail: info@covoh.org

NAMI—THE NATIONAL ALLIANCE FOR THE MENTALLY ILL

The Nation's Voice on Mental Illness

“NAMI is dedicated to the eradication of mental illnesses and to the improvement of the quality of life of all whose lives are affected by these diseases.”

NAMI's mission targets the 15 million Americans and their families living with severe mental illness. The alliance draws its success from the hundreds of thousands of volunteers who all work to improve the lives of those affected by mental illness.

NAMI's mission transcends local and state levels to address the issue of mental illness on a national scale. However, more than one thousand local affiliates in 50 state organizations allow NAMI to achieve a wide influence and focus on a common goal.

At the local level, consumers, family members, friends and professionals unite to create a supportive environment. NAMI local affiliates allow individuals to share and gain comfort in the mutual experiences of others.

NAMI's local affiliates provide information and referral services to individuals and families. Their members serve on local committees and network with local professionals to help spread awareness and education.

Agency Spotlight continued on page 5

(Agency Spotlight cont.)

Local organizations also have embraced the need for public relations and strive to educate the community. Each affiliate maintains a relationship with local media to promote stories about individuals with mental illness. Local affiliates also continually update their state organization about local issues and needs.

The alliance's national office maintains the strategic and long-term vision for the entire organization. The national office also provides support and resources to state and local affiliates, and it maintains a strong presence on Capitol Hill in Washington, D.C.

The national arm coordinates the NAMI National Annual Convention, which consistently attracts

more than 2,000 members each year. At this year's annual convention, NAMI celebrated its 25th anniversary in Washington, D.C.

Other national programs include Family to Family In Our Own Voice: Living with Mental Illness; The Campaign for the Mind of America; and the Information and Services Center, which provides information to more than 70,000 callers each year. To find out more visit NAMI on the Web at www.nami.org, call (703) 524-7600, or contact:

NAMI INDIANA
P O BOX 22697
INDIANAPOLIS, IN 46222
(317) 925-9399
WWW.NAMIINDIANA.ORG

Power Soccer comes to Indiana

The first international power soccer tournament was held in Indianapolis in the summer of 2004, with more than 100 athletes from the United States, Japan and France. IPAS sponsored this inaugural event and hopes to see the sport grow in popularity.

Power soccer is an exciting sport for people who use power wheelchairs. The game is usually played on a basketball court using oversized soccer balls. Each team has four members who work to score as many goals as possible in the two 25-minute halves.

While power soccer is relatively new to Indiana it has been in existence for about 14 years. The sport is seeing increasing numbers in participants and, with the success of the tournament in Indianapolis, local participation is likely to grow.

Wheelchair sports such as basketball, weightlifting, and track and field events have a long history of in the athletic world, but these sports do not allow much opportunity for power wheelchair users because



they require a great deal of upper body strength. Power soccer is the first team sport designed specifically for people in power wheelchairs—they can use the speed of their chairs combined with their other strengths to play, without forcing them to rely on just upper body ability.

Supporters of power soccer credit the sport not just for its athletic value, but also because it promotes team building, problem solving, confidence, mobility and hand-eye coordination.

For more information on power soccer, contact Indy Parks at 317-327-PARK.

You Don't Count if You Don't Vote



Count Us IN is a project of the Governor's Planning Council with People for Disabilities designed to increase the number of Hoosiers with disabilities who are involved in the electoral process as voters and volunteers. Traditionally, people with disabilities have lagged behind other Americans when it comes to voting. People with disabilities are registered to vote at a rate that is at least 10 percent less than the overall population; voter turnout for people with disabilities is about 20 percent less than the population in general.

Count Us IN seeks to close these gaps by organizing leadership teams of people with disabilities and other advocates at the local level to engage in the following activities:

SURVEY POLLING PLACES FOR ACCESSIBILITY

Count Us IN and IPAS are assisting the Indiana Secretary of State and individual counties in coordinating efforts to ensure that counties are in compliance with the accessibility provisions of HAVA, the Help America Vote Act, and the state's HAVA implementation plan. HAVA requires all polling places and voting equipment to be fully accessible by Jan. 1, 2006. One component of this project will be accessibility surveys of polling places. About half of the counties were surveyed on May 4, 2004 with the remaining counties to be surveyed on Nov. 6, 2004. Surveyors are eligible

to receive a \$10 stipend for every polling place surveyed and must commit to conducting at least five surveys. Each survey takes approximately 20 minutes. For more information about the polling place surveys, contact Julia Vaughn at 317-234-226 or countusin@gpcpd.org.

The Indiana State HAVA Implementation Plan includes the following accessibility provisions:

- Every polling place in the state, more than 4,000 sites, must be surveyed for accessibility.
- Counties are required to form local advisory councils composed of voters with disabilities, elderly voters and local election officials. The councils will review the results of polling place accessibility surveys and make recommendations for renovations or relocations to more accessible sites.
- Counties will be required to certify that they meet all accessibility requirements, both with voting technology and polling places, before they are reimbursed for the purchase of new voting machines.

VOTER REGISTRATION

The National Voter Registration Act or "Motor Voter" law requires all public and private agencies and individuals serving people with disabilities to offer voter registration. Despite the law, a 2000 National Organization on Disability/Harris poll indicated that only 44 percent of people with disabilities have been offered registration services.

Count Us IN will work with the Secretary of State's office, the Indiana Election Division, state agencies, not-for-profit organizations, and others to ensure that all who have an obligation to offer voter registration are doing so. They will also work with disabilities advocacy groups to conduct voter registration drives. For voter registration forms

Vote continued on page 7

(Vote cont.)

and other information please see the Secretary of State's Election Division Web site at www.in.gov/sos/elections/index.html, or contact:

ELECTIONS DIVISION
302 WEST WASHINGTON STREET
ROOM E-204
INDIANAPOLIS, IN 46204
PHONE: 317-232-3939
E-MAIL: ELECTIONS@IEC.STATE.IN.US

GET OUT THE DISABILITY VOTE

Count Us IN will work with service providers, advocacy groups, civic organizations and others to increase the disability vote in the 2004 fall election by 10 percent. This get out the vote effort will be non-partisan and will include voter education activities such as candidate forums and candidate surveys. Please see the National Organization on Disability Web site at www.nod.org for detailed information about getting out the disability vote.

To learn how you can get involved with Count Us IN, contact the Project Director Julia Vaughn at 317-234-2226 or CountUsIN@gpcpd.org. Courtesy of the Indiana Governor's Council for People with Disabilities.

Indiana 211 Partnership Connection

About 40 percent of Hoosiers can now pick up the phone, dial 211 and find information on the human services available in their communities. The 211 service will eventually be available state-wide, but is now operational in six centers serving 21 counties. The six centers are located in Allen, Bartholomew, Howard, Marion, Tippecanoe and Dearborn counties.

With an easy to remember and universally recognizable number, 211 will make it possible for callers in need to more easily make connections with appropriate community-based organizations and government agencies. The service will be a helpful resource for FSSA and the individuals needing services.

The 211 service is a national initiative to designate 211 as a human services telephone information and referral number similar to 911 for emergencies. The Indiana initiative dates back to 1999, when

the Information & Referral Network (Rainbow Book) and the Indiana Association of United Ways assembled a task force to study the feasibility of the system. The Indiana 211 project was developed through partnerships with the Family and Social Services Administration, the Indiana State Department of Health, the Cinergy Foundation, and many others.

The initiative has also received legislative support. The passage of HB 1344 encourages the use of 211 for information and referral, creates an account for future funds, requests no state funds, encourages state agencies to utilize the system to reduce duplicate information systems, and provides legal liability protections for recognized, nonprofit Indiana 211 Centers.

The 211 project is an important effort, and we look forward to the day when all Hoosiers can dial 211 and be connected with the help they need.



REPRESENTATIVE CASES ILLUSTRATE THE AGENCY'S FUNCTION

The names in these cases have been changed to protect the anonymity of the client. These cases have been closed, but in many instances are followed up to ensure that the rulings and agreements are being honored.

IPAS ADVOCATES FOR BETTER TREATMENT DURING INTERNMENT

“Dan” is a 35-year-old inmate at the Miami Correctional Facility. Dan has asthma, COPD, diabetes, a herniated disc, obesity and has one arm amputated. He contacted IPAS and alleged the following: 1) he was forced to walk when his wheelchair broke and the prison failed to fix it; 2) he was denied access to the commissary, gym and recreation area because of his size; 3) he was denied his psychotropic meds after requesting the meds several times; 4) he was denied basic clothes usually issued to inmates because they have to be specifically made for him because of his size; 5) he lost his arm over a year ago, but was never fitted for an artificial limb.

IPAS investigated and substantiated his complaints. The advocate met with the prison and addressed the issues with them. Dan was given a psychological evaluation immediately and was prescribed the appropriate medications. In regard to being denied access to the commissary, he has been put on a low-cal diet and is not allowed to eat junk food per doctor’s orders. He only had two T-shirts to wear and no long-sleeve shirt or jacket. His recreation time has to be spent outside in the courtyard because he cannot fit into the gym/ recreation area. The prison agreed to get him his clothes made as soon as possible. A request has been submitted to the state, from the facility doctor, for Dan to be seen at Indiana Brace in Indianapolis to be fitted for an artificial limb. IPAS will continue to monitor until all issues are resolved.

CHILD RECEIVES NEW WHEELCHAIR WITH HELP FROM IPAS

IPAS represented a 10-year-old child in his efforts to obtain funding from the state Medicaid office for a new wheelchair. This child, a resident of

Lawrence County, is diagnosed with cerebral palsy. The reason for the denial of the new wheelchair was that the old wheelchair was less than five years old. The state Medicaid office generally denies funding for new wheelchairs when the old one is less than five years old, regardless of the specific facts of the case. In this case, the old chair was no longer adequate because the child had recently had a G-tube inserted, and he now needs a wheelchair that either tilts or reclines to facilitate use of the G-tube. His older wheelchair could not be tilted or reclined.

The IPAS Advocacy Specialist entered into discussions with the state Medicaid office, as well as various other involved parties, for prior approval. Through IPAS advocacy efforts, the state Medicaid office reversed their earlier denial and agreed to provide the wheelchair to our client.

IPAS AIDS IN GUARDIANSHIP CASE

IPAS was contacted regarding “Gladys,” an 18-year-old woman who wished to continue to live in the community with her mother. Her parents, however, had different ideas and both her mother and father filed to become guardian of person and estate for their daughter. IPAS provided protection of rights to her as designated Guardian ad Litem. IPAS assisted Gladys, her mother and father to reach a settlement, which allowed our client to remain with her mother. The mother was then appointed guardian of person and estate for Gladys.

BEHAVIORAL PLAN DEVELOPED FOR 16-YEAR-OLD STUDENT

A mother called IPAS regarding her 16-year-old son who had been placed on homebound services in October following an allegation of possession of drugs. The young man had previously been identi-



REPRESENTATIVE CASES ILLUSTRATE THE AGENCY'S FUNCTION

The names in these cases have been changed to protect the anonymity of the client. These cases have been closed, but in many instances are followed up to ensure that the rulings and agreements are being honored.

fied by the school as emotionally handicapped. The Advocacy Specialist, in reviewing the student's records, found no current behavioral plan or assessment. When the issues were raised with the Director of Special Education no explanation for the missing documents was provided. The Director then contacted the parent and arrangements were made to return the student to his homeschool. The expulsion proceedings were dismissed and additional services were provided to make up for the missed homebound services pending new testing and development of a behavioral plan.

IPAS HELPS GOVERNMENT EMPLOYEE MAINTAIN SSI/MEDICAID BENEFITS

"Steve" is a 37-year-old individual with quadriplegia who works for a government agency. Steve also receives SSI and Medicaid, which helps to pay for his twice-daily required attendant care. All of the employees at Steve's agency received a pay raise beginning Jan. 1, 2004. This pay raise would jeopardize his SSI/Medicaid eligibility. The PABSS Advocacy Specialist worked with Steve to ensure that he was taking advantage of all work subsidies for which he was eligible. The PABSS Advocacy Specialist also worked with Steve to assure that accurate information regarding his work subsidies was provided to Social Security. Steve continues to work full-time and maintain his SSI/Medicaid eligibility to pay for his attendant care.

NEW INDIVIDUAL PLAN OF EMPLOYMENT CREATED TO HELP INDIVIDUAL BECOME GRAPHIC DESIGNER

"Mark" is a 48-year-old individual with the disabilities of morbid obesity, depression, learning disability, osteo-arthritis, and asthma. Mark had been receiving services from Indiana Vocational Rehabilitation Service (VRS) since May 21, 2001

and had the same Individual Plan of Employment (IPE) with the employment outcome of "computer lab monitor" since June 21, 2001 without any revisions or updates having been completed. Mark received notification from his "new" VRS counselor on Oct. 8, 2003 that his case would be closed with VRS. The documented reasons for this case closure included "he has exceeded the 'case limit' available for a customer" and "is just a difficult case and reasons for non-placement are hard to determine." Review of the VRS record and an interview with Mark revealed that he desperately wanted to work and had completed all of his responsibilities outlined in his IPE. Furthermore, Mark was job seeking on his own on a weekly basis.

In reviewing the file and speaking with the "new" VRS counselor it was agreed that Mark's morbid obesity had never been thoroughly evaluated as a barrier to his employment. The CAP Advocate also cited the portions of the Federal Rehabilitation Act of 1973, as amended, in regard to the "State Unit (VRS) may not place a dollar limit on specific services or on total services." The Aug. 30, 1999, decision by the Court of Appeals in Indiana, regarding Jill Dolan versus the Indiana Family and Social Services Administration of Disability, Aging and Rehabilitation Services was also discussed with the VRS counselor; this decision also cites the Federal Rehabilitation Act of 1973, as amended.

VRS consented to leave Mark's case open and a new IPE was developed with the vocational goal of "graphic designer" and services to be provided by VRS including financial assistance for college classes, transportation reimbursement, and note-taker services.

“You can’t bring that dog in here!”

BY BONNIE WEAVER, ADVOCACY SPECIALIST



I ask Lena, my three-year-old yellow Lab, to halt. I turn to speak to the person behind the counter of the convenience store. I command my guide dog to heel and she sits beside me. I patiently explain that she is a working guide dog, and that she has been trained to help me get around safely. I tell him that state and federal laws allow me to bring the dog into any business that serves the public. He doesn’t seem to be convinced. I pull a business-sized card out of my purse and hand it to him. The card is from Guide Dogs for the Blind, and it explains the purpose of guide dogs and the laws that protect the guide dog user. He reads it, hands it back to me, apologizes and I go on about my business.

This happens frequently. As a guide dog user, I often find myself educating people about the use of guide dogs. People often approach me and start petting Lena. The more polite people will ask me if they can pet her. They ask if they can feed her. They want to know if I’m training her.

I explain that when Lena is wearing her harness, she is considered to be working. I take her out of harness so she can meet people, and she knows the difference. In harness, petting and talking to her distract her from the job she has to do.

Guide and service dogs go through extensive training. As puppies, the dogs are raised by individuals or families that are responsible for teaching them house manners and basic obedience. The puppy raisers take their dogs with them within their communities to get them used to a variety of environments, sounds, people and experiences. At the age of 12-18 months, the dogs are returned to the school for the specialized training they need to become guide or service dogs.

There are dozens of schools in the U.S. that train dogs to assist people with disabilities. Most schools have specific approaches to service or guide dog work, so the individuals with disabilities usually travel to the school to learn how to work with the dog. There are a few schools that offer training to people within their own communities. After the individual and dog complete the training and graduate from the school, they return to their own community.

As I mentioned earlier, state and federal laws permit guide dog users to take their dogs into stores, into restaurants, on public transportation, or anywhere else which the public has access. **This is addressed in Chapter 3 of the Indiana State Code, IC 16-32-3-2, which identifies protections afforded to guide dog users as follows:**

Section 2 (a) states: “As used in this section, ‘public accommodation’ means an establishment that caters or offers services, facilities, or goods to the general public.

(b) A:

- (1) totally or partially blind person;
- (2) hearing impaired person; or
- (3) physically disabled person;

is entitled to be accompanied by a guide dog, especially trained for the purpose, in any public accommodation without being required to pay an extra charge for the guide dog. However, the person is liable for any damage done to the accommodation by the dog.

(c) A person who:

- (1) refuses access to a public accommodation; or
- (2) charges a fee for access to a public accommodation;

to a totally or partially blind person, a hearing impaired person, or a physically disabled person

Dog continued on page 11

(Dog cont.)

because that person is accompanied by a guide dog commits a Class C infraction. (As added by P.L.2-1993, SEC.15)."

Under the Americans with Disabilities Act (ADA), privately owned businesses that serve the public, such as restaurants, hotels, retail stores, taxicabs, theaters, concert halls, and sports facilities, are prohibited from discriminating against individuals with disabilities. The ADA requires these businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed. The ADA defines a service animal as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If they meet this definition, animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government.

There are service animals that assist persons with disabilities in their day-to-day activities. Some examples include:

- Alerting persons with hearing impairments to sounds.
- Pulling wheelchairs or carrying and picking up things for persons with mobility impairments.
- Assisting persons with mobility impairments with balance.
- Guiding people who are blind or legally blind.

A service animal is not a pet. The ADA requires businesses to modify "no pets" policy to allow the use of a service animal by a person with a disability. I've often been told by restaurant employees that I couldn't bring my dog into their facility. In 1996, I filed a complaint through the U.S. Department of Justice against a McDonald's restaurant because the manager refused to allow me and my guide dog to enter or to be served. In another instance, I contacted the national office of Burger King to let them know that a manager had tried to refuse to allow me to eat in the restaurant. He stated that, if

I stayed at the restaurant to eat, the dog's presence would violate local health department regulations. According to the ADA, a business cannot refuse to admit service animals on the basis of local health department regulations or other state or local laws. The ADA provides greater protection for individuals with disabilities and so it takes priority over the local or state laws or regulations.

A deposit or a surcharge may not be imposed on an individual with a disability as a condition to allowing a service animal to accompany the individual with a disability, even if deposits are routinely required for pets. However, a public accommodation may charge its customers with disabilities if a service animal causes damage and is the regular practice of the entity to charge non-disabled customers for the same types of damages. For example, a hotel can charge a guest with a disability for the cost of repairing or cleaning furniture damaged by a service animal if it is the hotel's policy to charge when non-disabled guests cause such damage.

Taxicab companies may not refuse to provide services to individuals with disabilities. This is a problem that I've encountered in many cities, including Indianapolis. Private taxicab companies are also prohibited from charging higher fares or fees for transporting individuals with disabilities and their service animals.

Any service animal that displays vicious behavior toward other guests or customers may be excluded. A business owner or employee may not make assumptions, however, about how a particular animal is likely to behave based on past experience with other animals. Each situation must be considered individually.

For further information about service animals or other requirements of the ADA, you may call the U.S. Department of Justice's toll-free ADA Information Line at 800-514-0301 (voice) or (800) 514-0383 (TDD).

Children with Disabilities Under No Child Left Behind: Myths and Realities

What do we really mean by “No child left behind”?

The purpose of the federal No Child Left Behind Act (NCLB) is “...to ensure that **all children** have a fair, equal and significant opportunity to obtain a high-quality education...”(emphasis added).

Recently, there has been discussion in the media about expanding the number of students with disabilities who may be excluded from the accountability system created by NCLB. There is also a great deal of confusion and misinformation about what this law already requires with regard to students with disabilities. *Children with Disabilities Under No Child Left Behind: Myths and Realities* is an attempt to address some of these misconceptions.

Myth #1: It is unfair to require children with disabilities to take those tests. It will endanger their already fragile self-esteem and increase the likelihood that they will drop out of school.

Reality: Most children with disabilities are able to keep up with their peers academically and take standardized assessments (tests) successfully—some with and some without accommodations and/or modifications (changes to the test that take the student’s disability into account).

Congress included students with disabilities in the accountability system of NCLB on purpose—because they are one of the groups of school children in need of attention. As with all students, students with disabilities each have unique strengths and needs. It is impossible (and offensive) to generalize about how “they” will fare on any particular assessment.

Many students with disabilities do not qualify for special education because they do not need it. Of those who do qualify, **the vast majority do not**

have disabilities that would prevent them from keeping up with their peers academically. This means they should be able to participate meaningfully in the regular standardized tests.

Some students may require approved modifications or accommodations in order to take the regular test. However, once these accommodations are provided, the students perform just like other students in their class. For example, a blind student might need a version of the test in Braille, but once the Braille version is provided, the student can participate at the same level as his classmates.

In the most recent data (school year 2000-2001) published by the U.S. Department of Education, even a very conservative count shows that a far greater percentage of school aged (ages 6-21) children in special education have a primary disability that is not related to their cognitive or intellectual ability than those who do.

There are 13 eligibility categories within the Individuals with Disabilities Education Act (IDEA)—the federal law that creates the special education program. By definition, nine of these categories do not include cognitive or intellectual impairments (speech or language impairments, emotional disturbance, specific learning disabilities, hearing impairments, orthopedic impairments, other health impairments, visual impairments, deaf blindness, autism).

In school year 2000-2001, the categories of students that did not include cognitive impairments totaled **86.5%** of children eligible for special education under IDEA. The categories that could include cognitive impairments totaled **13.4%**.

Children with Disabilities continued on page 13

(Children with Disabilities cont.)

In addition, a great many students within the other four categories (multiple disabilities, mental retardation, traumatic brain injury, and developmental delay) are **also able to function at grade level on the tests with or without approved modifications or accommodations.**

Removing more students with disabilities from the accountability system will defeat its purpose. It is discrimination, pure and simple, to assume that students with disabilities should be “protected” from the tests that all students take, from the level of accountability we expect from public schools with regard to all students, and from the high expectations we have for all students. If students with disabilities are excluded from the accountability system, they will become completely invisible, forgotten in the rush to meet the needs of students whose scores count.

Myth #2: It is unfair to require school districts, which otherwise do well on state tests, to be found “in need of improvement” when it is only the scores of children with disabilities that are holding them back. The law needs to have exceptions written into it to prevent that from happening.

Reality: There are already a number of exceptions in the law allowing school districts to remove the scores of children with disabilities from the accountability system. Additional exceptions are not needed and would be harmful to students with disabilities.

All districts have students with disabilities enrolled in their schools—there is nothing unique about this. One example often given as a reason for expanding the exceptions within NCLB is that of a school district with a facility like the Mayo Clinic within its borders, where families of children with disabilities may settle in greater numbers in order to be closer to treatment facilities. Such cases are rare and there already is an exception to protect districts in such cases.

Some of the exceptions that already allow districts to exclude the scores of students with disabilities or to use those scores to the district’s advantage are:

- If a school or district has a smaller number of students with disabilities, the scores of those students may be excluded if the number of students is too small to yield “statistically verifiable information” or the results would reveal “personally identifiable information” about an individual student

“Adequate Yearly Progress” (AYP) is the benchmark used to determine whether or not a school or district is in need of improvement, as defined by NCLB. (It is from this calculation that schools and districts would like to have a greater number of scores of students with disabilities excluded.) The number of students who may be excluded from the district’s AYP calculation because of small sample size is set by the state, and varies greatly from state to state. In Maryland, very few students are excluded (the set of students or “n” must be 5 or fewer), but in other states, the number of students may be as high as 45. This makes a big difference because there are many more districts with 45 or more students with disabilities than there are with only 5. Thus, in states with a high “n”, the scores of a relatively high number of students with disabilities may already have been excluded from AYP.

- Even if the group of students with disabilities within a school or district is not scoring high enough to be counted toward Adequate Yearly Progress, the school or district still can make AYP—as long as that group of students improves by 10 percent over the prior school year and makes progress on one other academic indicator, such as graduation rate.
- Schools and districts must test 95 percent of their children with disabilities, which means that the

(Children with Disabilities cont.)

scores of up to five percent of the students with disabilities already may have been excluded from the AYP calculation. Schools and districts are not permitted an automatic five percent exemption. This exception was included to provide for students who were absent on the day of the test—but it still factors into the AYP calculation.

- States may opt not to test students in schools that do not assign grade levels so their scores would not be counted.
- Certain students with cognitive disabilities may take a test that is based on achievement standards that are different from those that apply to other students. (Option 4 as described below). In NCLB, only scores that meet the level of “proficient” or “advanced” may be counted positively toward AYP (i.e. “help” the district). There is a cap on the number of “proficient” and “advanced” scores from the Option 4 students that may be counted toward AYP, but that cap is pretty high—1% of the total number of students taking the test in that grade. Although this exception does not involve a large number of students, the scores of students with disabilities may actually be a benefit for a district—improving, not reducing its chances to make AYP.

In addition, as mentioned in the Mayo Clinic example above, in cases where a district has a high incidence of students who meet the criteria for Option 4, the district may request a waiver from the state to allow it to count the proficient and advanced scores of even more of the students who take the Option 4 test.

- The state may allow a school or district to average its data over three years, enabling it to hide slow or no improvement within groups of students, such as students with disabilities, for some time.

If, even with all of these exceptions, a school district is unable to make AYP because too many students with disabilities don’t achieve the pro-

ficient level, perhaps the district truly is in need of improvement.

One purpose of NCLB is to raise expectations for students with disabilities, and unfortunately, expectations for this group of students have always been very low. Congress very specifically tried to raise expectations for students with disabilities when it made sweeping changes to the IDEA in 1997, and for that matter, when it passed the law over 25 years ago.

Myth #3: It is unfair to expect children with different types of disabilities to achieve on a “one size fits all” test.

Reality: It is not a “one size fits all” test. Students with disabilities may take the tests in one of four ways, in a manner that is selected specifically to meet that individual student’s needs.

In order for a student with a disability to take the test in any manner different from the way that students without disabilities are taking it, the student must meet certain legally based criteria.

Option 1: Take the regular assessment in the same manner as other students.

Option 2: Take the regular assessment with approved accommodations or modifications. For example, having a teacher read a test out loud to a blind student or providing the test in Braille.

Option 3: Take an alternate assessment that is based on the same achievement standards as the regular assessment. There is nothing that requires a state to have only one alternate assessment, and since students have varied and unique needs, it makes sense to consider having more than one alternate assessment.

Option 4: Take the alternate assessment based on different achievement standards (e.g. a life skills rather than academic curriculum).

(Children with Disabilities cont.)

There is no restriction on the number of students who meet the criteria for Option 4 who may take the test this way—only the manner in which their scores are counted at the district level. The one percent cap was intended to prevent states and districts from including the scores of students who are capable of using Options 1-3, thus “padding” their AYP with the scores of students who took a test that was too easy for them.

Myth #4: The Department hasn’t provided enough time for us to create these alternate ways to test students, so we have no accurate way to measure the progress of children with disabilities.

Reality: The requirement that states offer the option of an alternate assessment, accommodations or modifications to the test to students with disabilities is not at all new.

States have been required to provide alternate assessments since at least the last time the IDEA was revised in 1997.

In fact, some states like Pennsylvania, have been successfully using an alternate assessment for years. The requirement that accommodations and modifications to standardized tests be provided for qualified students with disabilities has existed for even longer than the requirement for alternate assessments, due to the passage of federal and state civil rights laws.

The difference is that this is the first time that states, districts, and schools that don’t meet these requirements will be held accountable. Until now, only the students themselves have been hurt by “one size fits all” tests that penalize them for problems caused by their disabilities.

CONCLUSION

Since a large number of students with disabilities would have to fail in order for this failure to have an impact on the district’s AYP status and since a great many students with disabilities can succeed on standardized tests, a finding of “needs improvement” achieves the primary goal of this law—it shines a light on those groups of students for whom the American dream of a quality public school education has not always been a reality.

If we allow this light to dim—by exempting the scores of more students’ from AYP—students with disabilities will recede back into the shadowy backrooms they inhabited for all those years before laws were passed to protect their civil rights.

ABOUT THE NATIONAL ASSOCIATION OF PROTECTION AND ADVOCACY SYSTEMS (NAPAS)

Children with Disabilities Under No Child Left Behind: Myths and Realities, published on March 24, 2004 by The National Association of Protection and Advocacy Systems (NAPAS).

NAPAS is the voluntary national membership association of Protection and Advocacy Programs (P&As) and Client Assistance Programs (CAPs) that assumes leadership in promoting and strengthening the role and performance of its members in providing quality legally based advocacy services.

The article is available in two formats: html—<http://www.wrightslaw.com/nclb/info/myths.realities.napas.htm> and PDF—<http://www.wrightslaw.com/nclb/info/myths.realities.napas.pdf>

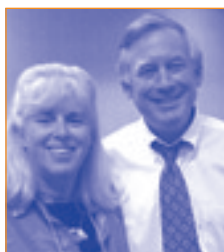
For information about issues raised in “Myths and Realities,” please contact Diane Smith at diane@napas.org.

IPAS Conference Update

IPAS sponsored and hosted a variety of educational conferences in 2004. IPAS staff is committed to providing information for parents, guardians, service providers, educators and people with disabilities on issues related to the rights of individuals with disabilities.

FROM EMOTIONS TO ADVOCACY SPECIAL EDUCATION CONFERENCE

This one-day conference covered advocacy training for parents, educators, healthcare providers, advocates and attorneys who represent children with disabilities. The conference provided information to help participants understand the issues and processes for children in special education. IPAS sponsored this event, which took place in September at the Omni North Hotel in Indianapolis.



Speakers: Peter and Pamela Wright

Pete and Pam Wright, authors of *Wrightslaw*, the foremost guide to issues dealing with special education, were the speakers for the conference. Pete and Pam are known for their dynamic presentation style, as well as their expertise.

The advocacy seminar focused on four areas: special education law, rights and responsibilities; test and measurements to measure progress and regression; SMART IEPs; and an introduction to tactics and strategies for effective advocacy. Each participant received copies of the Wrights' books, "*Wrightslaw: Special Education Law*" and "*Wrightslaw: From Emotions to Advocacy*."

The seminar covered specific topics such as the Individuals with Disabilities Education Act (IDEA), Individualized Education Programs (IEPs), procedural safeguards, alternative educational settings, Section 504, No Child Left Behind Act, reasons for parent-school conflict, how to organize your child's file, effective negotiation strategies, letter writing, and how to prepare for school meetings. Approximately 200 individuals

attended the "From Emotions to Advocacy Special Education Conference."

OTHER CONFERENCES:

THE 2ND ANNUAL HUMAN RIGHTS COMMITTEE CONFERENCE

This two-day workshop was for Human Rights committee members to understand the need for and to effectively participate in human rights committees. The conference covered a variety of topics about Human Rights Committees. Sessions included:

- **Resident and Treatment Rights Training at the State Operated Facilities (SOF).** This session provided information regarding the rights of individuals seeking treatment in an Indiana mental health facility.
- **Human Rights Committees: Keeping Organizations on Course.** In this session participants explored the ethical and philosophical basis for Human Rights Committees.
- **The Ring of Safety.** People with developmental disabilities are the most sexually victimized group in society. This workshop looked at causes and prevention strategies. Participants learned about behaviors that can be the result of having been sexually assaulted.

- **Communication: Who's Listening?** This ses-



Speaker: Dave Hingsburger

sion looked at the dynamics of interacting with individuals who may not always have the ability to use words to communicate feelings and feeling states.

IPAS plans to host a Human Rights Committee Conference on a yearly basis. One hundred individuals attended the "Human Rights Committee Conference" this year.

(Conference Update cont.)

UNEQUAL JUSTICE IN INDIANA? MAKING THE CASE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

This conference discussed the challenges of people with disabilities when dealing with the justice system. The one-day seminar explored the extent of the problem, barriers to equal justice in Indiana, practices from other states, and discussion of an Indiana “call to action.”

The conference was intended for members of the judiciary, law enforcement, Department of Corrections staff, self advocates, guardians/advocates, educators victim’s services representatives, attorneys, disability services representatives, and anyone interested in equal justice for persons with developmental disabilities in their encounters with the criminal justice system.

This year, 61 individuals attended the “Unequal Justice in Indiana Conference.”

SYMPOSIUM ON DUAL DIAGNOSIS

This conference, to be held in November, is designed to provide information about the use of medications, diagnosis and assessment, strategies for cross-system collaboration, and families’ perspectives for persons who are dually diagnosed. Presentations will be made by four nationally recognized experts in the field of developmental disability and mental illness: Dr. Christopher McDougle, speaking on drug therapy; Joan Beasley, Ph.D., speaking on cross system collaboration; Lauren Charlot, Ph.D., speaking on diagnosis and assessment; and Dan Dubovsky, MSW and parent, speaking on family issues.

The symposium is being coordinated by Choices, Inc. and is sponsored by Eli Lilly and Company and IPAS. Symposium partners include: The Arc of Indiana, Mental Health Association in Indiana, Mental Health Association in Marion County, Indiana University School of Medicine, Indiana Institute on Disability and Community, Family and Social Services Administration, Midtown Community Mental Health Center and BehaviorCorp.

DD Network—ADD, IPAS, IGCPD and IIDC

Working together as advocates for individuals with disabilities by protecting, promoting, and empowering our fellow Hoosiers.

IPAS is pleased to be part of the Developmental Disabilities (DD) Network.

There are nearly four million Americans with developmental disabilities. Developmental disabilities are severe, chronic disabilities attributable to mental and/or physical impairment, which manifest before age 22 and are likely to continue indefinitely. This results in substantial developmental limitations, including: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency, as well as the continuous need for individually planned and coordinated services.

THE PARTNERS OF THE DD NETWORK

THE U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES’ ADMINISTRATION ON DEVELOPMENTAL DISABILITIES (ADD)

The U.S. Department of Health & Human Services’ Administration on Developmental Disabilities (ADD) provides all funding for the collaborative partnerships to “ensure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, integration, and inclusion into the community.”

DD Network continued on page 18

(DD Network cont.)

ADD provides funding, monitoring and policy guidance to state councils on developmental disabilities, protection and advocacy agencies, and university centers for excellence in developmental disabilities nationwide.

The major goal of the ADD program is to encourage and promote a partnership with state governments, local communities, and the private sector to assist people with developmental disabilities reach their maximum potential.

INDIANA PROTECTION AND ADVOCACY SERVICES (IPAS)

Mission Statement: To protect and promote the rights of individuals with disabilities, through empowerment and advocacy.

Indiana Protection and Advocacy Services (IPAS) is an independent state agency that receives no state funding in order to remain independent from all potential service providers. IPAS administers federally mandated and funded programs in Indiana, including Protection and Advocacy for Individuals with Developmental Disabilities (PADD). The Indiana General Assembly created IPAS in 1977 in compliance with the federal Developmental Disabilities Act.

Annually, the IPAS Commission establishes service priorities to direct their efforts at targeted concerns. IPAS professional staff assists Hoosiers with disabilities through advice, investigation and attorney services.

INDIANA GOVERNOR'S COUNCIL FOR PEOPLE WITH DISABILITIES

Mission Statement: To promote public policy, which leads to the independence, productivity, and inclusion of people with disabilities in all aspects of society.

An independent state agency, Indiana Governor's Council for People with Disabilities (IGCPD) works to facilitate change. Consumer driven, the Council is charged with determining how the public and private sectors can be most responsive to people with disabilities. Federal funds are disseminated to support innovative programs that are visionary, influence public policy, empower individuals and families, and advocate positive system changes.

INDIANA INSTITUTE ON DISABILITY AND COMMUNITY

Mission Statement: The Mission of the IIDC is to foster communities that welcome, value, and support the participation and contributions of people of all ages and abilities through research, education, and service.

Committed to providing disability-related information and services across the life span, from birth to older adulthood, the IIDC works to build community capacity through collaborative efforts with institutions of higher education, state and local government agencies, community service providers, persons with disabilities and their families, and advocacy organizations.



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MEMBER RECRUITMENT

IPAS is always looking for new Commission and Advisory Council members to help serve the needs of individuals with disabilities. Commission members must have a commitment toward promoting the legal and civil rights of persons with developmental disabilities, mental illness or other disabilities, and to the cause of protecting and promoting those individuals' rights to make their own personal choices.

The IPAS Commission consists of 13 members. The Governor appoints four. The remainder are appointed by majority vote of the membership. Commission members serve three-year terms.

The Mental Health Advisory Council consists of 10 members appointed by the Governor, to serve a non-renewable four-year term.

*Gubernatorial appointment

FUNDING SOURCE

IMPACT IS THE NEWSLETTER OF INDIANA PROTECTION AND ADVOCACY SERVICES, an independent state agency which is funded entirely by federal grant funds. This publication was made possible by funding from the Administration for Children and Families (38%), the Center for Mental Health Services, Substance Abuse and Mental Health Services Administration (28%), the

Health Resources and Services Administration, Maternal and Child Health Bureau (2%), all within the U.S. Department of Health and Human Services and from the U.S. Department of Education, Office of Special Education and Rehabilitation Services (27%) and the Social Security Administration (5%). These contents are solely the responsibility of the grantee and do not necessarily represent the official views of the federal or state government.

The logo for IMPACT is displayed in a large, stylized font. The letters are in various shades of blue and orange, with a gradient effect. The 'I' is a solid blue square, 'M' is dark blue, 'P' is orange, 'A' is dark blue, 'C' is orange, and 'T' is dark blue.

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